

Proposed

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Topeka KS 66612-1588
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**State of Kansas
Department of Revenue
Notice of Hearing on Proposed Administrative Regulation**

A public hearing will be conducted by the Department of Revenue at 10:00 a.m. on Tuesday, September 27, 2011, in Room 230, Secretary's Conference Room on the second floor of the Docking State Office Building, 915 SW Harrison, Topeka to consider amendments to an income tax regulation. Copies of this proposed regulation may be found at www.ksrevenue.org.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written comments from the public on the proposed regulation. All interested parties may submit written public comments on the proposed regulation prior to the hearing to Kathleen Smith, Tax Specialist, Office of Policy and Research, Room 230, Docking State Office Building, 915 SW Harrison, Topeka, Kansas 66612 or through e-mail at kathleen_smith@kdor.ks.gov.

All interested parties will be given a reasonable opportunity to present their views, either orally or in writing or both, concerning the adoption of the proposed regulation. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Kathleen Smith at (785) 296-3081 or TTY (785) 296-6461. Disabled parking is located in State Parking Lot No. 2, south of the Docking Building facing Harrison Street. The east entrance to the Docking Building is accessible.

This regulation is proposed for adoption on a permanent basis. A summary of the proposed regulation and the economic impact follows:

**Kansas Department of Revenue
Article 12.-Income Tax**

Amendments to K.A.R. 92-12-66a. This regulation specifies factors to be considered, definitions to be used and processes to be followed in determining whether petitions for abatement submitted to the secretary of revenue should be approved or denied. The regulation clarifies the contents of the report of an abatement that is filed with the secretary of state, legislative post audit and the attorney general and that it is available for public inspection.

Economic Impact:

The Department of Revenue does not anticipate any impact on the department, other government agencies, or private businesses or individuals.



Proposed

A copy of this regulation and the economic impact statement may be obtained from the Kansas Department of Revenue, Office of Policy and Research, Room 230, Docking State Office Building, 915 SW Harrison, Topeka, Kansas 66612-1588 or via our website: www.ksrevenue.org.

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92-12-66a. Abatement of final tax liabilities. (a) General. The authority of the secretary to abate all or part of a final tax liability shall be exercised only in cases in which there is serious doubt as to either the collectability of the tax due or the accuracy of the final tax liability and the abatement is in the best interest of the state. This authority shall be exercised to effect the collection of taxes with the least possible loss or cost to the state and with fairness to the taxpayer. The determination of whether to abate all or part of a final tax liability shall be wholly discretionary.

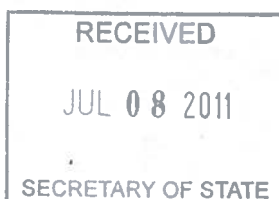
(b) Definitions.

(1) "Assets" means the taxpayer's real and personal property, tangible and intangible.

(2) "Collectability" means the ability of the department of revenue to collect, and the ability of the taxpayer to pay, the tax liability.

(3) "Concealment of assets" means a placement of assets beyond the reach of the department of revenue, or a failure to disclose information relating to assets, that deceives the department with respect to the existence of the assets, whether accomplished by act, misrepresentation, silence, or suppression of the truth.

(4) "Final tax liability" means a tax liability that was established by the department to which the taxpayer has no further direct appeal rights.



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JUN 13 2011

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Proposed

92-12-66a
Page 2

(5) "Order denying abatement" means an order issued by the secretary that rejects a petition for abatement and refuses to abate any part of a final tax liability.

(6) "Order of abatement" means an order issued by the secretary that abates all or part of a final tax liability and states the reasons that this action was taken.

(7) "Parties" means either the person who requests an abatement of a final tax liability or the person's authorized representative, and either the secretary of revenue or the secretary's designee.

(8) "Secretary" means the secretary of the department of revenue or the designee of the secretary.

(9) "Serious doubt as to collectability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that the likelihood of recovering the tax liability is less than probable.

(10) "Serious doubt as to liability" means the doubt that exists when a reasonable person, viewing the controlling circumstances objectively, would conclude that it is probable that the final tax liability previously established by the department is greater than the actual tax liability imposed by the Kansas tax imposition statutes.

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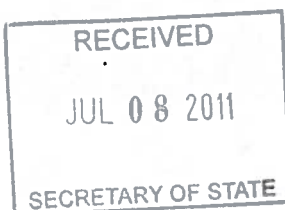
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(11) "Tax" means the particular tax owed by the taxpayer and shall include any related interest and penalty.

(c) Factors affecting abatement.

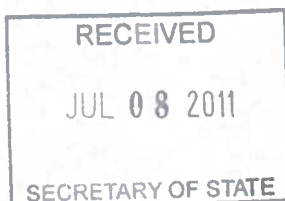
(1) No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer's liability for the tax has been established on the merits by a court judgment or decision of the ~~board~~ court of tax appeals. No final tax liability shall be abated on the ground of serious doubt as to liability if the taxpayer has filed tax returns, absent a showing of the reporting errors on the returns.

(2) No tax liability shall be abated by the secretary if the taxpayer has acted with intent to defraud or to delay collection of tax. Frivolous petitions and petitions submitted only to delay collection of a tax shall be immediately rejected.

(d) Procedures.

(1) A Each petition for abatement shall be captioned "petition for abatement of a final tax liability" and shall be submitted to the secretary. The petition shall be signed by the petitioner and the taxpayer, if available, under the penalties of perjury, and shall include the following:

(A) The reasons why all or part of the final tax liability should be abated;



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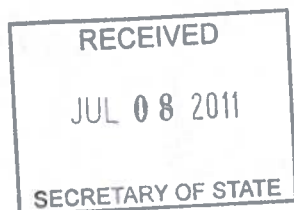
(B) the facts that support the abatement; and

(C) a waiver of the taxpayer's right of confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated and amendments thereto, conditioned upon the secretary's abatement of all or part of the final tax liability.

(2) If a petition alleges serious doubt as to collectability, the taxpayer shall submit a statement of financial condition that lists assets and liabilities, accompanied by an affidavit signed by the preparer under the penalties of perjury, attesting that the financial statement is true and accurate to the best of the preparer's knowledge.


(3) After a petition has been submitted, the taxpayer shall provide any additional verified documentation that is requested by the secretary. The petitioner or taxpayer may be required by the secretary to appear before the secretary and testify under oath concerning a requested abatement.

(4) A petition for abatement may be withdrawn by the taxpayer at any time before its acceptance. When a petition is denied, the taxpayer shall be promptly notified in writing by the secretary within 30 days of the decision to deny.



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DEPT. OF ADMINISTRATION

JUN 21 2011

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Proposed

92-12-66a

Page 5

(5) An order of abatement that abates all or part of a final tax liability may be issued by the secretary. The order ~~shall~~ may direct any remaining liability to be paid within 30 days. ~~Any~~ Each order of abatement shall set forth the reasons that the petition for abatement was granted and all relevant information, including the following:

(i) (A) The names of all parties;

(ii) (B) the amount and type of tax, interest, and penalties that were abated;

(iii) (C) the amount of tax, penalty, and interest that remain to be paid as ~~of~~ on the date of the order; and

(iv) (D) the amount that has been paid, if any.

(6) The submission of a petition for abatement shall not ~~operate to stay~~ prevent the collection of any tax.

(e) Effect of an order ~~to abate all or part of a final tax liability of~~ abatement. ~~The secretary's~~ Each order ~~to abate all or part of a final tax liability of~~ abatement shall relate to the entire liability of the taxpayer with respect to which the order is made, and shall conclusively settle the amount of liability. Once an

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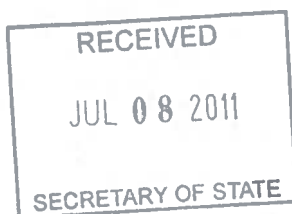
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order of abatement is issued, matters covered by the order shall not be reopened by court action or otherwise, except for one of the following reasons:

- (1) Falsification of statements or concealment of assets by the taxpayer;
- (2) mutual mistake of a material fact sufficient to cause a contract to be

reformed or set aside; or

- (3) serious doubt as to collectability arising after an abatement order is issued that is based on serious doubt as to liability.

(f) Effect of waiver of confidentiality. The issuance of an order of abatement ~~by the secretary~~ for \$5,000 or more shall make all ~~records~~ reports of the abatement proceeding available for public inspection upon written request, in accordance with ~~the statute~~ K.S.A. 79-3233b, and amendments thereto, and the taxpayer's express waiver of the right to confidentiality under the confidentiality provisions of chapter 79 of the Kansas statutes annotated, and amendments thereto.

(g) Annual report. On or before the ~~first~~ last day of September of each year, a summary of each petition of abatement that was granted during the preceding state fiscal year that reduced a final tax liability by \$5,000 or more shall

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JUN 13 2011

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Proposed

92-12-66a
Page 7

be prepared for filing with the secretary of state, the division of post audit of the legislature, and the attorney general. Each summary shall include the following:

- (1) ~~The names and addresses of the petitioner, and, if different, name of the taxpayer;~~
- (2) ~~the amount of the disputed final tax liability~~ a summary of the issues and the reasons for the abatement; and
- (3) ~~the reasons for, conditions to, and amount of the abatement; and~~
- (4) the amount of ~~any payment~~ final tax liability, including penalties and interest, that was abated. (Authorized by K.S.A. 79-3236; implementing K.S.A. ~~2000~~ 2010 Supp. 79-3233, 79-3233a, and 79-3233b, as amended by 2011 SB 212, sec. 1; effective July 27, 2001; amended P-_____.)

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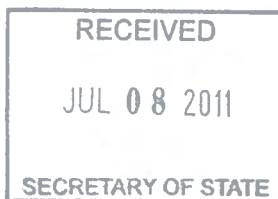
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KANSAS DEPARTMENT OF REVENUE

ECONOMIC IMPACT STATEMENT
K.A.R. 92-12-66a

I. Summary of proposed regulation.

This regulation specifies factors to be considered, definitions to be used and processes to be followed in determining whether petitions for abatement submitted to the secretary of revenue should be approved or denied. The regulation clarifies the contents of the report of an abatement that is filed with the secretary of state, legislative post audit and the attorney general and that it is available for public inspection.

II. Reason or reasons the proposed regulation is required, including whether or not the regulation is mandated by federal law.

This regulation reflects the process and procedure followed by the department and clarifies the reporting requirements of the secretary of revenue that is set by statute.

The regulation is not mandated by federal law.

III. Anticipated economic impact upon the Kansas Department of Revenue.

This regulation creates no economic impact.

IV. Anticipated economic impact upon other government agencies and upon private business or individuals.

This regulation creates no economic impact on other government agencies, private business or individuals; it merely reflects current practice by the department.

V. Description of any less costly or less intrusive methods that were considered by the Department of Revenue for achieving the state purpose of the regulation and the reason that those methods were rejected in favor of the proposed regulation.

None.

